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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA, ) No.  
14 Plaintiff, )  
15 v. ) PLEA AGREEMENT  
16 ALEC SCOTT PAPIERNAK, )  
17 Defendant. )  
18 \_\_\_\_\_ )

19 I, ALEC SCOTT PAPIERNAK, and the United States Attorney's Office for the Northern  
20 District of California (hereafter "the government") enter into this written plea agreement (the  
21 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal  
22 Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to count 1 of the captioned information charging me with  
25 Wire Fraud, in violation of 18 U.S.C. § 1343. I agree that the elements of the offense and the  
26 maximum penalties are as follows:

27 Elements:

28 (1) I devised or intended to devise a scheme or artifice to defraud, or to obtain

PLEA AGREEMENT  
CR \_\_\_\_\_

1 money or property by false or fraudulent pretenses, representations, or promises;

2 (2) I transmitted, or caused to be transmitted, by means of wire, radio, or  
3 television communication in interstate or foreign commerce, any writings, signs, signals,  
4 pictures, or sounds for the purpose of executing such scheme or artifice; and

5 (3) I acted with the intent to defraud.

6 Maximum Penalties:

- |    |    |                                 |  |
|----|----|---------------------------------|--|
| 7  | a. | Maximum prison sentence         | 20 years   |
| 8  | b. | Maximum fine                    | \$250,000, or twice the gain or loss,<br>whichever is greater. |
| 9  | c. | Maximum supervised release term | 3 years  |
| 10 | d. | Mandatory special assessment    | \$ 100   |
| 11 | e. | Restitution                     | To be determined by the Court at the<br>time of sentencing.    |

12  
13 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that  
14 the following facts are true:

15 a. Over a period of time from approximately January 2002, and  
16 continuing through to September 2003, I falsely and fraudulently obtained user  
17 names and passwords for Paypal accounts, allowing me to “hijack” those accounts and engage in  
18 fraudulent purchases and transfers of funds.

19  
20 b. Specifically, I created and used fake, or “spoofed,” PayPal  
21 webpages, which appeared to be valid PayPal webpages, but in reality were false and fraudulent,  
22 and which requested PayPal users to log on and enter their user names and passwords. I then  
23 emailed messages that appeared to be from PayPal directing the recipients to  
24 connect to a linked webpage. Upon clicking on the webpage link, the recipient was connected not  
25 to the legitimate PayPal website, but to the above-described spoof site created and maintained by  
26 myself. This spoof site was virtually identical in appearance to the valid PayPal site, and  
27  
28

1 directed the individual to login with a user name and password. I set up the spoof  
2 site to incorporate a “back-end email account,” which, upon the individual logging on, would  
3 secretly email the individual’s user name and password to an email account controlled by myself.  
4  
5 In this way, I was able to obtain the user names and passwords for PayPal accounts without the  
6 owner’s permission or knowledge.

7 c. I also emailed a “key logger” virus to certain PayPal users,  
8 purporting to originate from a legitimate PayPal email address, by emailing a slightly modified  
9 version of a legitimate PayPal email, stating that the victim/recipient needed to install a security  
10 update in order to access PayPal. The email would appear to come from PayPal and would  
11 contain a file titled “Fraudbuster,” or “Account Manager,” both PayPal administrative file names.  
12 Once their computers were infected with the virus, the victims’ keystrokes were captured and  
13 sent to the me at an account I had created on his website.  
14

15 d. Once I had falsely and fraudulently obtained the user names and  
16 passwords for the PayPal accounts, I transferred funds from the hijacked accounts  
17 to my own use.  
18

19 e. On January 28, 2003, in order to execute the above-described  
20 scheme, I sent certain signals over the Internet by wire communication from a computer located  
21 in Minnesota to the computer systems of PayPal located in the Northern District of California,  
22 requesting that PayPal transfer funds, that is \$10,000, from the hijacked account of Barrie Pike to  
23 an account I controlled.  
24

25  
26 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
27 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
28

1 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise  
2 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and  
3 to pursue any affirmative defenses and present evidence.  
4

5 4. I agree to give up my right to appeal my conviction, the judgment, and orders of  
6 the Court. I also agree to waive any right I may have to appeal my sentence.

7 5. I agree not to file any collateral attack on my conviction or sentence, including a  
8 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim  
9 that my constitutional right to the effective assistance of counsel was violated.  
10

11 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is  
12 entered.

13 7. I agree that the Sentencing Guidelines should be calculated as follows, and that I  
14 will not ask for any other adjustment to or reduction in the offense level or for a downward  
15 departure of any kind:  
16

- |    |    |  |        |
|----|----|--|--------|
| 17 | a. | Base Offense Level, USSG 2B1.1(a):   | 6      |
| 18 | b. | Loss (More than \$30,000), USSG 2B1.1(b)(1)(D):                                      | +6     |
| 19 | c. | More than 10 victims, USSG 2B1.1(b)(2)(A)(i):  | +2     |
| 20 | d. | Trafficking unauthorized access devices,<br>USSG 2B1.1(b)(2)(9)(B):                  | +2     |
| 21 | e. | Acceptance of responsibility:<br>(If I meet the requirements of<br>U.S.S.G. § 3E1.1) | ____-3 |
| 22 | f. | Adjusted offense level:  | 13     |

23 I agree that, regardless of any other provision in this agreement, the government may and will  
24 provide to the Court and the Probation Office all information relevant to the charged offenses or  
25  
26  
27  
28

1 the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines  
2 calculations above, the Court may conclude that a higher guideline range applies to me, and, if it  
3 does, I will not be entitled, nor will I ask, to withdraw my guilty plea.  
4

5 8. In return for the government's promises set out below, I agree to pay restitution  
6 for all the losses caused by all the schemes or offenses with which I was charged in this case, and  
7 I agree that the amount of restitution will not be limited to the loss attributable to the count to  
8 which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good  
9 faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after  
10 sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office,  
11 provide accurate and complete financial information, submit sworn statements and give  
12 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as  
13 a result of my crimes, and release funds and property under my control in order to pay any fine,  
14 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.  
15  
16

17 9. I agree not to commit or attempt to commit any crimes before sentence is imposed  
18 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial  
19 release (if any); intentionally provide false information to the Court, the Probation Office,  
20 Pretrial Services, or the government; or fail to comply with any of the other promises I have  
21 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this  
22 Agreement, then the government will be released from all of its promises in this agreement,  
23 including those set forth in paragraphs 12 through 14 below, but I will not be released from my  
24 guilty plea.  
25  
26

27 10. I agree that this Agreement contains all of the promises and agreements between  
28

1 the government and me, and I will not claim otherwise in the future.

2 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
3 District of California only, and does not bind any other federal, state, or local agency.  
4

5 The Government's Promises

6 12. The government agrees to move to dismiss any open charges pending against the  
7 defendant in the captioned indictment at the time of sentencing.

8 13. The government agrees not to file or seek any additional charges against the  
9 defendant that could be filed as a result of the investigation that led to the captioned indictment.  
10

11 14. The government agrees to recommend the Guidelines calculations set out above.

12 The Defendant's Affirmations

13 15. I confirm that I have had adequate time to discuss this case, the evidence, and this  
14 Agreement with my attorney, and that he has provided me with all the legal advice that I  
15 requested.  
16

17 16. I confirm that while I considered signing this Agreement, and at the time I signed  
18 it, I was not under the influence of any alcohol, drug, or medicine.

19 ///

20 ///

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26 ///

1           17. I confirm that my decision to enter a guilty plea is made knowing the charges that  
2 have been brought against me, any possible defenses, and the benefits and possible detriments of  
3 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no  
4 one coerced or threatened me to enter into this agreement.  
5

6  
7 Dated: \_\_\_\_\_

\_\_\_\_\_  
ALEC SCOTT PAPIERNIAK  
Defendant

8  
9  
10  
11 \_\_\_\_\_ KEVIN V. RYAN  
United States Attorney  
12

13  
14 Dated: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW A. PARRELLA  
Assistant United States Attorney  
15

16  
17  
18 I have fully explained to my client all the rights that a criminal defendant has and all the  
19 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
20 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
21 me, his decision to plead guilty is knowing and voluntary.  
22

23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL J. COLICH  
Attorney for Defendant  
25